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10/701,146	11/04/2003	Frank C. Smith JR.	50121	4832
22929	7590	12/16/2005	EXAMINER	
SUE Z. SHAPER, P.C. 1800 WEST LOOP SOUTH SUITE 1450 HOUSTON, TX 77027			DINH, TIEN QUANG	
			ART UNIT	PAPER NUMBER
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**MAILED**

**DEC 16 2005**

**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/701,146

Filing Date: November 04, 2003

Appellant(s): SMITH, FRANK C.

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**Sue Shaper  
For Appellant**

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/12/05 appealing from the Office action mailed 9/13/04.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6, 8, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al in view of Weaver et al and Rutan 4641800.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al as modified by Weaver et al and Rutan 4641800 as applied to claim 1 above, and further in view of Firestone.

#### **(10) Response to Argument**

In response to applicant's arguments that the term "type" is no indefinite. The examiner would like to point out again that term "type" is considered to be indefinite as clearly written in the MPEP. See MPEP 2173.05(b) E.

The Examiner still maintains that the term "significant" in claim 1 is vague and indefinite. What qualify this as "significant?" The applicant has not provided any statements or rationales as to what "significant" means. Please note that the applicant has not submitted any evidence or statements in the disclosure as to what "significant" definitively means.

In response to applicants arguments on the rejection of claims 1-6, 8, 9, 10, and 11, the Examiner would like to point out that the claims calls for an aircraft having a canard, an opening in the rear of the fuselage and no empennages. The primary reference Sutton et al teaches an aircraft having no empennages. Sutton et al only lacks canards and an opening in the rear of the fuselage. Weaver clearly teaches a door at the rear of the fuselage to allow easy loading and

unloading of cargos. Rutan was used to show that canards in a similar aircraft (in this case one with no empennages to increase the stability and maneuverability. These are valid motivation for one skilled in the art to add a canard and door to the rear of the fuselage.

In response to applicant's arguments on Sutton et al teaching away from the use of canards, the applicant is advised to look at *In re Norman A. Meinhardt* (157 USPQ 270) and *In re Aller* et al (105 USPQ 223) and *In re McKee* et al (37 USPQ 613) on the "negative" teaching of a reference. The fact that that Sutton et al discloses that there is difficulty in putting a canard in a flying wing aircraft would not prevent one skilled in the art from putting a canard in the flying wing aircraft to improve maneuverability. In any event, the Sutton et al reference teaches that in 1945, "canards" in front of an flying wing aircraft are well known in the art as pointed out by the applicant on section 1, lines 29-44. Therefore, the use of canards is very well known at least since 1945. The fact that one skilled in the art was having trouble in putting a canard in 1945 does not prevent one skilled in the art in 2003 from putting a canard in front of a flying wing aircraft. With computer controlled aircrafts with fly by wire, many aircrafts that were once deemed unflyable can now be flown. Please look at the B2 Bomber, for example. It was once considered that flying wing aircrafts were unstable. However, with the advent of smaller computer system that can be used in aircrafts, flying wing aircrafts can now fly safely. Furthermore, Rutan discloses a tail-less aircraft having canards. One skilled in the art would have used canards (a wing that is known to increase stability and maneuverability) in Sutton et al's system to increase stability and maneuverability.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments on claims 5 and 6, please note that "personal" can be broadly interpreted as any aircrafts that can be used for persons. A light personal aircraft or personal aircraft is anticipated by Sutton et al since it is a "light personal aircraft or personal aircraft."

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

T. Dinh



Conferees:

PP 

JWE

